



EUROPEAN COMMISSION

Directorate-General for Trade

The Director General

Brussels,
Trade.dga1.d.3/PL/ac (2018) 371045

By registered letter with acknowledgment of receipt

Ms Lora Verheecke
Corporate Europe Observatory
Rue d'Edimbourg 26
1050 Brussels

Subject: Your application for access to documents – Ref. GestDem No 2017/6864

Dear Ms Verheecke,

We refer to your e-mail dated 13 November 2017, in which you make a request for access to documents in accordance with Regulation (EC) No 1049/2001¹ ("Regulation 1049/2001"), registered on 15 November 2017 under the above mentioned reference number.

We would like to apologise for the delay in replying to your request, which is mainly due to a large number of complex access to documents requests pending simultaneously with DG TRADE.

1. SCOPE OF YOUR REQUEST

We understand from your request that you would like to have access to the following documents:

- *"Correspondence between DG Trade and any foreign governments regarding the SPS formal and informal committees of the WTO, since 1st July 2017;*
- *Minutes and other reports of meetings between DG Trade and any foreign governments regarding the SPS formal and informal committees of the WTO since 1st July 2017."*

We have identified two documents that fall under the scope of your request, notably:

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

1. an information note on the outcome of the 69th WTO SPS Committee meeting of July 2017, including in annex a report of bilateral meetings held with third countries in the margin of the WTO SPS Committee meeting (Ares(2017)3874115);
2. an information note on the outcome of the 70th WTO SPS Committee meeting of November 2017, including in annex a report of bilateral meetings held with third countries in the margin of the WTO SPS Committee meeting (Ares(2017)5561956).²

In addition, I would like to inform you that the positions taken by the EU in the meetings of the SPS Committee of the WTO, held in Geneva, are available on the website of the WTO³.

2. EXAMINATION AND CONCLUSIONS UNDER REGULATION 1049/2001

In accordance with settled case law,⁴ when an institution is asked to disclose a document, it must assess, in each individual case, whether that document falls within the exceptions to the right of public access to documents set out in Article 4 of Regulation 1049/2001. Such assessment is carried out in a multi-step approach: first, the institution must satisfy itself that the document relates to one of the exceptions, and if so, decide which parts of it are covered by that exception; second, it must examine whether disclosure of the parts of the document in question pose a “*reasonably foreseeable and not purely hypothetical*” risk of undermining the protection of the interest covered by the exception; third, if it takes the view that disclosure would undermine the protection of any of the interests defined under Articles 4.2 and 4.3 of Regulation 1049/2001, the institution is required “*to ascertain whether there is any overriding public interest justifying disclosure*”.⁵

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents,⁶ “*the exceptions to that right [...] must be interpreted and applied strictly*”.⁷

Having examined the documents identified above in light of the applicable legal framework, I am pleased to release them. Some personal data were removed in accordance with Article 4(1)(b) of Regulation 1049/2001. However, names of public figures, such as EU Commissioners or Ministers of third countries, are disclosed.

² Both these Ares numbers contain duplicates of the same documents as the same reports were sent both to the Council and to the European Parliament. To avoid duplication, we release in this reply one version, as provided to the Trade Policy Committee.

³ WTO SPS Committee meetings: https://www.wto.org/english/tratop_e/sps_e/sps_e.htm

⁴ Judgment in *Sweden and Maurizio Turco v Council*, Joined cases C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 35.

⁵ *Id.*, paragraphs 37-43. See also judgment in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraphs 52 and 64.

⁶ See Regulation (EC) No 1049/2001, recital (4).

⁷ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

In addition, references to individual EU Member States were deleted in certain passages of the annexes to documents 1 and 2 as this information is covered by the exceptions set out in Article 4.1(a) third indent (protection of the public interest as regards international relations) and 4.1(a) fourth indent (protection of the financial, monetary or economic policy of the Community or a Member State).

The reasons justifying the application of the exceptions are set out below in sections 2.1 and 2.2.

2.1. Protection of international relations and of the financial, monetary or economic policy of the Union or a Member State

Article 4.1(a) third indent of Regulation 1049/2001 provides that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: the public interest as regards: [...] international relations.”

Moreover, Article 4.1(a) fourth indent of Regulation 1049/2001 provides that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: the public interest as regards: [...] the financial, monetary or economic policy of the Community or a Member State.”

According to settled case-law, *"the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001, combined with the fact that access must be refused by the institution, under that provision, if disclosure of a document to the public would undermine those interests, confers on the decision which must thus be adopted by the institution a complex and delicate nature which calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation"*.⁸ In this context, the Court of Justice has acknowledged that the institutions enjoy *"a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the] exceptions [under Article 4.1(a)] could undermine the public interest"*.⁹

The annexes to documents 1 and 2 contain reports of the Commission to the Member States and to the European Parliament regarding bilateral meetings with third countries to discuss on specific SPS measures. These meetings were requested either by the EU or by trading partners to discuss detailed points and concerns with regard to measures applied on imports to and exports from the EU. They also refer to actions and plans, including at the domestic level, with regard to specific products, and contain assessments, views and opinions of the EU or of its counterparts on certain measures affecting trade.

In this context, revealing the names of individual Member States in relation to specific points discussed during these meetings would undermine in a reasonably foreseeable manner both the economic policy of the Member States concerned and the international

⁸ Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36

⁹ Judgment in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

relations of the EU. In particular, they would reveal details of strategic interests and objectives of the Member States, information which would weaken the position of the EU and of the Member States in their commercial relations with trading partners. It would also provide other trading partners with information that they could exploit to their advantage in other negotiations with the EU.

2.2. Protection of privacy and integrity of the individual

Article 4.1(b) of Regulation 1049/2001 provides that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.”

The Court of Justice has ruled that “where an application based on Regulation 1049/2001 seeks to obtain access to documents containing personal data” “the provisions of Regulation 45/2001, of which Articles 8(b) and 18 constitute essential provisions, become applicable in their entirety”.¹⁰

Article 2(a) of Regulation 45/2001 provides that “‘personal data’ shall mean any information relating to an identified or identifiable natural person [...]”. The Court of Justice has confirmed that “there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of ‘private life’”¹¹ and that “surnames and forenames may be regarded as personal data”,¹² including names of the staff of the institutions.¹³

According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish “the necessity of having the data transferred” and additionally “if there is no reason to assume that the legitimate interests of the data subjects might be prejudiced”. The Court of Justice has clarified that “it is for the person applying for access to establish the necessity of transferring that data”.¹⁴

Documents 1 and 2, as well as their respective annexes, contain personal information, such as names and other information that allows the identification of natural persons.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons

¹⁰ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 101; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraphs 63 and 64.

¹¹ Judgment in *Rechnungshof v Rundfunk and Others*, Joined cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

¹² Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

¹³ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111.

¹⁴ *Id.*, paragraph 107; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 77.

concerned. Therefore, we are disclosing the documents requested without including these personal data.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B4
BERL 5/282
1049 Bruxelles

or by email to: xxxxxxxxxx@xx.xxxxxx.xx

Yours sincerely,



Jean-Luc DEMARTY